

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SNYDER'S-LANCE, INC. and
PRINCETON VANGUARD, LLC,

Plaintiffs,

v.

FRITO-LAY NORTH AMERICA,
INC.,

Defendant.

Case No. 3:17-CV-00652

DECLARATION OF RACHEL M. SASSER

I, Rachel M. Sasser, declare as follows:

1. Currently, I serve as Director of Marketing for Snyder's-Lance Inc. ("Snyder's-Lance"). I have been in this position since 2016.

2. I am over the age of 18 and competent to testify. I either have personal knowledge of the matters stated in this declaration, or obtained the information herein from company business records made at the time of the events they record, by persons with knowledge of those events, and which were maintained and kept as part of Snyder's-Lance's regular and ordinary practices. I would testify truthfully to these matters if called upon to do so.

Market Share of the PRETZEL CRISPS Brand

3. As Director of Marketing, I oversee all of Snyder's-Lance's marketing efforts regarding its PRETZEL CRISPS product. I currently have responsibility for the PRETZEL CRISPS brand.

4. PRETZEL CRISPS pretzel crackers are primarily sold in the deli section, along with other deli snacks. "Deli snacks" is a term of art in the industry; the PRETZEL CRISPS brand is one of the main competitors in the deli snacks section. The deli category includes such

products as bagel chips, pita chips, pretzel crackers, flatbreads, crackers, as well as complementary products such as hummus, guacamole, dips, and other products that are typically sold in the deli section of supermarkets and grocery stores.

5. Since the PRETZEL CRISPS brand was launched, several other companies have created their own competing pretzel cracker products. These new competing products include: (i) Gratify pretzel crackers, (ii) Weightwatchers Mini Dijon pretzel thins, (iii) Town House pretzel thins, (iv) Town House pretzel flip sides thins, (v) HEB pretzel crackers, (vi) Deutsche Küche pretzel crackers, (vii) Dream Pretzels All Natural Pressels pretzel chips, (viii) Laurel Hill oven baked pretzel chips and (ix) Glutino gluten-free pretzel chips. These products are shown below, and none are categorized or described as “pretzel crisps.”





6. Frito-Lay also has introduced several pretzel cracker products over the last few years. These products include: Rold Gold pretzel thins, Rold Gold pretzel waves, Stacy's pretzel thins, and Rold Gold thin crisps. These products are shown below, and none are categorized or described as "pretzel crisps."





7. Based on IRI data, the PRETZEL CRISPS brand has increased its market share in the deli category between 2012 and 2017.¹ In 2012, the PRETZEL CRISPS brand had a 24.1% market share. By 2014, its market share was 26.6%. That same year, Nielsen's Food syndicated data reported that PRETZEL CRISPS Original flavor were the highest selling individual pretzel product in America. In 2017, the PRETZEL CRISPS brand accounted for more than 30% of the deli cracker market and remains above that standard in 2018. Also in 2017, PRETZEL CRISPS became the number one product in the "deli snacks" category according to IRI.

Marketing the PRETZEL CRISPS Brand

8. Through various, multifaceted marketing campaigns, Snyder's-Lance continues to invest many millions of dollars to promote the PRETZEL CRISPS brand. Advertising expenditures between 2014 and 2018 totaled more than \$4.7 million. Since the inception of the PRETZEL CRISPS brand, over \$50 million has been spent on advertising, marketing, and promoting the PRETZEL CRISPS brand through traditional channels like print and billboard and

¹ IRI is a market research firm which provides consumer, shopper, and retail market intelligence and analysis focused on the consumer packaged goods industry.

online channels like social media. Attached as **Exhibit 1** is a true and correct copy of some of Snyder's-Lance's recent print and digital ads for PRETZEL CRISPS.

9. Snyder's-Lance's advertising campaigns resulted in an estimated 486 million consumer impressions. Snyder's-Lance nationwide "Snack Genius" advertising campaign in 2016 and 2017 was particularly successful. It secured an estimated 225 million consumer impressions through print and online advertising as well as through social media. A "consumer impression" is counted each time a consumer views a particular advertisement and it is a standard industry metric for measuring the success of an advertising campaign.

10. Snyder's-Lance has continued to take advantage of social media to market PRETZEL CRISPS. By using social media, Snyder's-Lance can directly interact with current PRETZEL CRISPS consumers and find others who may be interested in the brand. The social media agency hired by Snyder's-Lance frequently posts stories, updates, and other content on the brand's Facebook page, Twitter account and Instagram account (all of which always feature the PRETZEL CRISPS brand name). As of October 2018, the PRETZEL CRISPS brand had over 474,000 followers on Facebook, 47,800 on Twitter and 42,500 on Instagram. Attached as **Exhibit 2** is a true and correct copy of a printout showing PRETZEL CRISPS Facebook, Twitter and Instagram profiles. The PRETZEL CRISPS brand has also received 498,000 "likes" on Facebook; this represents an increase of 245,000 since 2012. By contrast, Frito-Lay's STACY'S product has 352,000 followers on Facebook, 855 followers on Twitter, and 2,800 followers on Instagram. Attached as **Exhibit 3** is a true and correct copy of a printout showing STACY'S Facebook, Twitter, and Instagram profiles.

11. Snyder's-Lance's field marketing teams have traveled the country interacting with consumers to promote the PRETZEL CRISPS brand. In 2017, these teams distributed 600,000

product samples at events that prominently featured the PRETZEL CRISPS trademark. In the summer of 2018, PRETZEL CRISPS participated in a “Big Bite Tour” of food festivals in 14 cities across the U.S. Over 3.9 million people attended the Big Bite Tour and field marketing teams handed out over 275,000 samples of PRETZEL CRISPS to attendees.

12. PRETZEL CRISPS crackers have also been featured in unsolicited articles in leading trade publications, including *Baking & Snack*, *Convenience Store News*, *Deli Business*, *Fancy Food & Culinary Products*, *Food Business News*, *Prepared Foods*, *Progressive Grocer*, *Snack Food & Wholesale Bakery*, and *Whole Foods Magazine*. Attached as **Exhibit 4** is a true and correct copy of trade publication articles in which PRETZEL CRISPS has been featured.

Protecting the PRETZEL CRISPS Brand

13. Snyder’s-Lance polices the PRETZEL CRISPS brand from infringement by third parties. For example, in 2018, Wish Farms, a produce grower and shipper, listed a recipe on its website for Blueberry PRETZEL CRISPS. Snyder’s-Lance informed Wish Farms of the infringing use and Wish Farms apologized and agreed to remove the references from its website. Attached as **Exhibit 5** is a true and correct copy of Snyder’s-Lance’s correspondence with Wish Farms.

14. In 2017, Columbia County Bread and Granola (“Columbia County”) made an infringing use of PRETZEL CRISPS on its flatbread product. When Snyder’s-Lance brought this infringing use to the attention of Columbia County, it agreed to discontinue use of the PRETZEL CRISPS mark. Attached as **Exhibit 6** is a true and correct copy of Snyder’s-Lance correspondence with Columbia County.

15. In 2017, Snyder’s-Lance raised an infringing use of the PRETZEL CRISPS mark with Siegert Enterprises d/b/a Betty Jane Homemade Candies Inc. (“Betty Jane”). To resolve the matter, Betty Jane took a limited license to sell-off its remaining inventory and agreed to cease

using the mark. Attached as **Exhibit 7** is a true and correct copy of the Trademark License Agreement between Princeton Vanguard and Betty Jane.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Charlotte, North Carolina, this 29th day of October, 2018.

A handwritten signature in cursive script, appearing to read "Rachel M. Sasser", written over a horizontal line.

Rachel M. Sasser
Snyder's-Lance, Inc.

CERTIFICATE OF SERVICE

I do certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record or interested parties via the CM/ECF system.

This 29th day of October, 2018.

ELLIS & WINTERS LLP

/s/ Jonathan D. Sasser

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